

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

RONALD FOXMAN,

Plaintiff,

-against-

MICHAEL J. ASTRUE,  
COMMISSIONER, SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

**08 194**  
**CIVIL COMPLAINT**

**FILED/ITALIANO, J.**  
IN GLENK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ JAN 15 2008 ★  
BROOKLYN OFFICE

**GOLD, M.J.**

Plaintiff, by his attorney, Wendy Brill, respectfully alleges:

1. That this is an action in the nature of a review of the decision of the administration law judge pursuant to Section 205(g) and/or 1631 (c)(3) of the Social Security Act, as amended, 42 U.S.C. Section 405(g) and/or 1383 (c)(3).

2. That the plaintiff resides at 2685 University Avenue, Apt. 17D, Bronx, New York 10468.

3. That the defendant is the Commissioner of the Social Security Administration.

4. That defendant, as Commissioner of the Social Security Administration, has full power and responsibility over disability insurance benefits and Supplemental Security Income benefits under the Social Security Act, as amended.

5. That the plaintiff became entitled to receive disability insurance benefits by virtue of post concussion syndrome and back problems.

6. That plaintiff's disability has been established and began in June 1980.

7. That the Social Security Administration disallowed plaintiff's application upon the ground that plaintiff failed to establish a period of disability and upon the ground that plaintiff did not have an impairment or combination of impairments of the severity prescribed by the pertinent provisions of the Social Security Act to establish a period of disability or to allow Supplemental Security Income Benefits.

8. That subsequent thereto, plaintiff requested a hearing and on July 24, 2006, a hearing was held which resulted in a denial of plaintiff's claim on September 11, 2006.

9. Thereafter plaintiff requested a review by the Appeals Council, and after its consideration, said decision of the administrative law judge was affirmed on September 26, 2007.

10. That the decision of the administrative law judge, as affirmed by the Appeals Council, was erroneous.

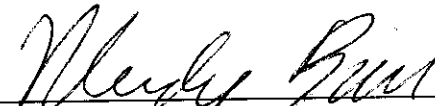
11. That the decision of the administrative law judge, as affirmed by the Appeals Council, is not supported by substantial evidence on the record.

12. That the decision of the administrative law judge, as affirmed by the Appeals Council, is contrary to the law.

WHEREFORE, plaintiff respectfully prays that:

- (a) A summons be issued to respond directing his to appear before this Court;
- (b) Defendant be ordered to submit a certified copy of the transcript of the record including evidence upon which the findings and decisions complained of, are based;
- (c) Upon such record, this court modify the decision of the defendant to grant maximum monthly insurance and/or Supplemental Security Income benefits to the plaintiff, retroactive to the date of initial disability; and
- (d) For such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
December 4, 2007

  
WENDY BRILL (WB 3649)  
Attorney for Plaintiff  
9 Murray Street, Suite 4 West  
New York, New York 10007  
(212) 608-4100

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Ronald Foxman  
2685 University Ave. Apt. 17D  
Bronx, New York 10468

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

Michael J. Astrue, Commissioner of  
Social Security, 900 Altemeyer Blvd.,  
Baltimore, Maryland 21235

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Wendy Brill, 9 Murray Street-#4W  
New York, NY 10007 (212) 608-4100

Attorneys (If Known)

U.S. Attorney, One Pierrepont Plaza  
Brooklyn, NY 11231

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 3 Federal Question  
(U.S. Government Not a Party)

☒ 2 U.S. Government Defendant

☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4

Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5

Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 374 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input checked="" type="checkbox"/> 862 Black Lung (923) <input checked="" type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

## V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from another district (specify)

☐ 6 Multidistrict Litigation

☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

## VI. CAUSE OF ACTION

Brief description of cause:

Plaintiff seeks review of administration decision

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 12/4/07

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

194

**ARBITRATION CERTIFICATION**

I, \_\_\_\_\_, counsel for \_\_\_\_\_ do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. \_\_\_\_\_ Relief other than monetary damages is sought.

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**Please refer to NY-E Division of Business Rule 50.1(d)(2)**

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: no

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? no

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? no

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.**

Yes X

No \_\_\_\_\_

**Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?**

Yes \_\_\_\_\_ (If yes, please explain)

No X

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

**ATTORNEY BAR CODE:** 3649

**E-MAIL Address:** WendyBrill@nyc.rr.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

**Signature:**

Wendy Brill



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

SLR:KMA/jr

*271 Cadman Plaza East, 7<sup>th</sup> Fl.  
Brooklyn, New York 11201*

January 29, 2008

Electronically Filed

Clerk of the Court  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Ronald Foxman v. Commissioner of Social Security  
Civil Action No. CV-08-0194 (ENV)(SMG)

To Whom It May Concern:

The defense of this action is being handled by the undersigned Assistant U.S. Attorney. Please note Assistant U.S. Attorney Kathleen A. Mahoney's appearance and update the docket sheet so that AUSA Kathleen A. Mahoney receives all future ECF notifications in this matter. Ms. Mahoney's email address is [kathleen.mahoney@usdoj.gov](mailto:kathleen.mahoney@usdoj.gov)

Thank you for your attention to this matter. If you have any questions, please contact the undersigned at the number listed below.

Respectfully submitted,

BENTON J. CAMPBELL  
United States Attorney

By: /s/ Kathleen A. Mahoney  
KATHLEEN A. MAHONEY  
Assistant U.S. Attorney  
718-254-6026

cc: Wendy Brill, Esq.  
Attorney for Plaintiff

SLR:KMA; 2007V00112

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

RONALD FOXMAN,

Plaintiff,

-against-

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

-----X

STIPULATION AND  
ORDER OF TRANSFER

Civil Action CV-08-0194

(Vitaliano, J.)  
(Gold, C.M.J.)

WHEREAS, Plaintiff commenced this action pursuant to 42 U.S.C. § 405(g), seeking review of a final decision of Defendant, the Commissioner of Social Security, denying his claim for disability insurance benefits and/or Supplemental Security Income under Titles II and XVI of the Social Security Act, respectively;

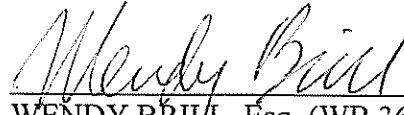
WHEREAS, Plaintiff resides at 2685 University Avenue, Apt. 17D, Bronx, New York 10468; and

WHEREAS, pursuant to the second sentence of 42 U.S.C. § 405(g), this action should have been brought in the district court of the United States for the judicial district in which Plaintiff resides;

IT IS HEREBY STIPULATED AND AGREED by and between counsel for Plaintiff, RONALD FOXMAN, and counsel for Defendant, the COMMISSIONER OF SOCIAL SECURITY, that Plaintiff's action is transferred to the United States District Court for the

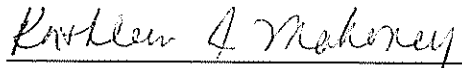
Southern District of New York.

Dated:

  
WENDY BRILL, Esq. (WB 3649)  
Attorney for Plaintiff  
9 Murray Street, Suite 4 West  
New York, New York 10007  
(212) 608-4100

Brooklyn, New York  
January 30, 2008

BENTON J. CAMPBELL  
United States Attorney  
Eastern District of New York  
Attorney for Defendant  
271 Cadman Plaza East, 7<sup>th</sup> Floor  
Brooklyn, NY 11201

By:   
KATHLEEN A. MAHONEY (km 5173)  
Assistant U.S. Attorney  
(718) 254-6026/7000  
[kathleen.mahoney@usdoj.gov](mailto:kathleen.mahoney@usdoj.gov)

SO ORDERED:

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Honorable Eric N. Vitaliano  
United States District Judge





**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

SLR:KMA  
2007V00112

*271 Cadman Plaza East, 7<sup>th</sup> Floor  
Brooklyn, New York 11201*

February 11, 2008

BY ECF

Honorable Eric N. Vitaliano  
United States District Judge  
225 Cadman Plaza East, Room 714 S  
Brooklyn, New York 11201

Re: Ronald Foxman v. Commissioner of Social Security,  
Civil Action No. CV-08-0194 (ENV)(SMG)

Dear Judge Vitaliano:

Enclosed please find, for Your Honor's signature, a proposed Stipulation and Order of Transfer for this social security benefits claim case. Plaintiff resides in the Southern District of New York.

Thank you for Your Honor's consideration of this request.

Respectfully submitted,

BENTON J. CAMPBELL  
United States Attorney

By: s/\_\_\_\_\_  
KATHLEEN A. MAHONEY  
Assistant U.S. Attorney  
(718) 254-6026/7000

Enclosure

cc: Wendy Brill, Esq.  
Attorney for Plaintiff  
9 Murray Street, Suite 4 West  
New York, New York 10007

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ FEB 13 2008 ★  
BROOKLYN OFFICE

SLR:KMA; 2007V00112

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

RONALD FOXMAN,

Plaintiff,

-against-

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

-----X

STIPULATION AND  
ORDER OF TRANSFER

Civil Action CV-08-0194

(Vitaliano, J.)  
(Gold, C.M.J.)

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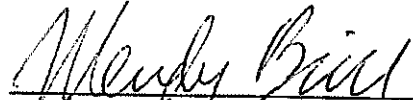
WHEREAS, Plaintiff resides at 2685 University Avenue, Apt. 17D, Bronx, New York 10468; and

WHEREAS, pursuant to the second sentence of 42 U.S.C. § 405(g), this action should have been brought in the district court of the United States for the judicial district in which Plaintiff resides;

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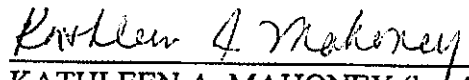
Southern District of New York.

Dated:

  
WENDY BRILL, Esq. (WB 3649)  
Attorney for Plaintiff  
9 Murray Street, Suite 4 West  
New York, New York 10007  
(212) 608-4100

Brooklyn, New York  
January 30, 2008

BENTON J. CAMPBELL  
United States Attorney  
Eastern District of New York  
Attorney for Defendant  
271 Cadman Plaza East, 7<sup>th</sup> Floor  
Brooklyn, NY 11201

By:   
KATHLEEN A. MAHONEY (km 5173)  
Assistant U.S. Attorney  
(718) 254-6026/7000  
[kathleen.mahoney@usdoj.gov](mailto:kathleen.mahoney@usdoj.gov)

SO ORDERED:

s/Eric N. Vitaliano  
Honorable Eric N. Vitaliano  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT C. HEINEMANN  
Clerk  
TERRY VAUGHN  
Chief Deputy Clerk

PLEASE REPLY TO:

X **BROOKLYN OFFICE**  
U.S. Courthouse  
225 Cadman Plaza East  
Brooklyn, New York  
11201

February 13<sup>th</sup>, 2008

To: Clerk  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

In re: Foxman v. Astrue  
Civil Action Number 1:08-0194 (ENV)(SMJ)

Pursuant to the Stipulation and Order of Transfer directing the transfer of the above referenced action to the United States District Court for the Southern District of New York, the following documents are herewith enclosed:

X Certified Copy of the Stipulation and Order of Transfer  
X Certified Copy of the Docket Sheet  
       Entire File  
X Other: Entire case filed electronically;  
Documents may be retrieved utilizing  
the PACER System on the Court's website:  
**[www.nyed.uscourts.gov](http://www.nyed.uscourts.gov)**

Kindly acknowledge receipt of the above-cited documents on the enclosed copy of this letter.

Yours truly,  
ROBERT C. HEINEMANN  
Clerk of Court

By: C. Barrett  
Deputy Clerk

\_\_\_\_\_  
Encl.  
cc: Case File

Transferee Court Case No. \_\_\_\_\_